Message

From: Buckley, Katherine [Buckley.Katherine@epa.gov]
Sent: 6/6/2018 7:46:42 PM
To: Smith, Walker [Smith.Walker@epa.gov]; Gilrein, Stephen [gilrein.stephen@epa.gov]; Kasman, Mark [Kasman.Mark@epa.gov]
CC: Seager, Cheryl [Seager.Cheryl@epa.gov]; Thompson, Steve [thompson.steve@epa.gov]; Doroski, Brenda [Doroski.Brenda@epa.gov]
Subject: RE: Hi Walker! We have need of international assistance ...

Thanks, Walker. I am happy to reach out to our colleagues at the US Embassy in Germany to see if they can help collect the information Steve and Cheryl are seeking.

Thanks,
Katherine

From: Smith, Walker
Sent: Tuesday, June 05, 2018 3:00 PM
To: Gilrein, Stephen <gilrein.stephen@epa.gov>; Kasman, Mark <Kasman.Mark@epa.gov>
Cc: Seager, Cheryl <Seager.Cheryl@epa.gov>; Thompson, Steve <thompson.steve@epa.gov>; Doroski, Brenda <Doroski.Brenda@epa.gov>; Buckley, Katherine <Buckley.Katherine@epa.gov>
Subject: RE: Hi Walker! We have need of international assistance ...

Hi Steve, Steve and Cheryl. I miss my Region 6 colleagues! Miss all of you! So good to see your names on the email.

I am copying Mark Kasman, who is the Director of the Office of Regional and Bilateral Affairs. His office works with Embassies and Missions in other countries and can reach out to State Department staff in Germany and Japan to see if they can assist in getting this information. I am also copying his Senior Advisors who work with Germany (Katherine Buckley) and Japan (Brenda Doroski).

Good luck and let me know when you are in DC.

Walker B. Smith
Director
Office of Global Affairs and Policy
Office of International and Tribal Affairs
U.S. Environmental Protection Agency
202.564.4044

From: Gilrein, Stephen
Sent: Tuesday, June 05, 2018 12:04 PM
To: Smith, Walker <Smith.Walker@epa.gov>
Cc: Seager, Cheryl <Seager.Cheryl@epa.gov>; Thompson, Steve <thompson.steve@epa.gov>
Subject: Hi Walker! We have need of international assistance ...

Hi Walker, I hope all is well and that you don't miss us too much! I have an "international" question and need to know if you can provide direction or assistance.

We have a well-publicized air quality issue with respect to a neoprene manufacturing facility, Denka Performance Elastomer, LLC, in Laplace, Louisiana. Current offsite chloroprene emissions exceed EPA's recommended inhalation guidelines [current emissions are in the 1 in 1000 lifetime cancer risk range]. Notwithstanding recent emission controls

constructed pursuant to a State order, there are not any concrete plans to meet the recommended .2 micrograms per cubic meter [which would equate to a 1 in 10,000 lifetime cancer risk] at the fence line. The facility claims that such a requirement is not economically feasible. [I copied a recent article as background, but a quick Google search will give you much, much more].

This is the only manufacturer of neoprene in the US; the only two other neoprene manufacturing facilities in the world are located in Germany and Japan. We want to know what chloroprene ambient air concentrations these other two facilities are required to meet and what controls the two governments are requiring. Is this something you can assist with?

The two facilities and locations:

Omi Plant
Itoigawa, Niigata Prefecture, Japan

ARLANXEO Deutschland GmbH
Alte Heerstraße 2
41540 Dormagen

[yes, we can issue a 114, and we may; but we anticipate a "battle"].

Thanks

Steve

EPA Denies Denka's Chloroprene IRIS Correction Request Using New Tool

February 06, 2018

Citing a new analytical approach recommended by the National Academy of Sciences (NAS), EPA has denied a chemical company's request to withdraw or correct its assessment of the health risks of the chemical chloroprene - which the company charges is driving an unusual and costly enforcement action at its Louisiana facility.

"The EPA, after careful review of the [request for correction (RFC)] submitted by [Denka Performance Elastomers (DPE)], has concluded that the underlying information and conclusions presented in the Toxicological Review of Chloroprene . . . are consistent with the EPA's Information Quality Guidelines," EPA's top staff research official concludes in a Jan. 24 response to the company.

The agency's denial of the RFC appears to undercut efforts by congressional Republicans who had cited the Integrated Risk Information System' (IRIS) chloroprene assessment and the resulting enforcement action against Denka as a poster child for why the program needed to be eliminated or overhauled.

But it is not clear what effect the denial will have on some House Republican lawmakers' request for the agency to create a special mechanism by which the agency can "correct" IRIS analyses.

"Given that the IRIS program appears to continually reject requests for correction based on credible scientific data, there appears to be no means of establishing the scientific integrity of the program as a whole," Rep. Lamar Smith (R-TX), chairman of the House science committee, and Rep. Andy Biggs (R-AZ), chair of the committee's environment panel, said in an Oct. 12 letter to EPA Administrator Scott Pruitt.

EPA's denial of Denka's request is based in part on a systematic review performed by IRIS staff, who used the approach to evaluate research on chloroprene health risks published since the assessment was completed in 2010 to determine if there were new information that would justify updating the assessment.

Systematic review is a structured and documented process for transparent literature review and evaluation of the information.

In this case, IRIS staff conclude that seven new chloroprene studies evaluated "represent novel approaches to analyzing existing epidemiologic, toxicological, and toxicokinetic data available for chloroprene. However ... it is the opinion of the EPA that these studies do not present sufficient evidence or provide adequate rationale for re-evaluating the entire chloroprene toxicity database."

The document goes on to describe various concerns with three of the studies. "Ultimately, the Agency stands behind the conclusions made in the 2010 IRIS Toxicological Review of Chloroprene, including the derived cancer values. The new studies on chloroprene do not provide a reasonable basis for reassessing the human health effects due to chronic chloroprene exposure."

The IRIS program has been working to adopt systematic review methodologies over the course of the past year under the direction of new leadership specializing in the approach, which NAS recommended that EPA adopt to strengthen IRIS' scientific conclusions and enhance the program's transparency.

The chloroprene systematic review has become one of a handful of documents presented to a new NAS committee that is reviewing the IRIS program, focusing largely on its systematic review work, which kicked off with a Feb. 1-2 workshop.

NATA Data

Concerns with the Denka plant originated with EPA's 2015 release of its 2011 National Air Toxics Assessment (NATA) data showing high levels near the plant of the likely carcinogen chloroprene. The chemical is a feedstock for neoprene.

EPA and the Louisiana Department of Environmental Quality (LDEQ) are using NATA to target the plant's emissions - a novel use of the air toxics data to support specific compliance action rather than broader strategic efforts.

Denka filed the request for correction last June, along with a letter from its president and CEO, Koki Tabuchi, who formally petitioned Pruitt to "withdraw and correct" what it considered errors in EPA's 2010 IRIS assessment of chloroprene, which classifies the chemical as a likely human carcinogen and sets an inhalation unit risk (IUR) estimate for cancer potency of 5x10^-4 per microgram per cubic meter of air (ug/m^3)^-1 when chloroprene is inhaled daily over a lifetime.

This IUR, together with the NATA data, is the basis for the enforcement effort to reduce the plant's emissions to 0.2 micrograms per cubic meter (ug/m^3).

But Tabuchi blamed the IRIS assessment for enforcement actions from state and federal officials that he says could force the facility to close.

Tabuchi charged that EPA and LDEQ "pressed DPE to reduce emissions to achieve an extraordinarily miniscule ambient air target concentration of 0.2 ug/m^3 for chloroprene on an annual average basis ... based on a risk assessment that applied the erroneous and scientifically unsubstantiated IUR from the 2010 IRIS" assessment.

But plaintiffs in a pending class action suit against the company charged in a response to the RFC that Denka failed to present any new evidence to EPA, and that the report from Denka's consultant, Environ, "suffers from various fatal objections to its methodology that justify dismissal of its arguments..."

"Denka's RFC aims to replace EPA's peer-reviewed IRIS Assessment with Environ's proprietary science, radically altering the agency's duty to use scientific decision-making to regulate air quality to protect human health. Denka's RFC demands a new chloroprene emission limit that would dramatically increase the average amount of chloroprene vapor allowed into the ambient air. . . . If Environ's proprietary science replaces EPA's . . . that will be incorporated into Denka's LaPlace permits, then Denka's success will reverberate far beyond LaPlace and surrounding communities."

Pending Lawsuit

Even as EPA rejected Denka's RFC, the company remains embroiled in a class action lawsuit with residents of LaPlace, LA, who are suing over their exposure to chloroprene releases from the plant.

An amended complaint filed with the U.S. District Court for the Eastern District of Louisiana in *Taylor et al v. Denka Performance Elastomer LLC et al,* proposes a class-action suit against Denka and DuPont, which built the plant in the late 1960s and operated it until selling it to Denka in 2015.

The suit charges Denka and DuPont with nuisance, trespass and negligence to protect the community, arguing the companies were aware of the health effects of exposure to chloroprene air emissions since the 1980s but withheld that information from the community and state and federal agencies.

The suit argues the companies "failed to act reasonably to prevent emissions of chloroprene that would result in concentrations of greater than 0.2 ug/m3 around the surrounding community - indeed, those concentrations were hundreds of times the threshold for reasonable and safe chloroprene exposure."

The suit points to an EPA report detailing numerous issues of concern with the plant following an enforcement inspection over the summer of 2016, and urges Judge Martin Feldman to order Denka to stop or reduce the plant's production until it can meet emissions levels EPA deems safe.

Denka and DuPont, which still owns the land the facility sits on, have responded with filings arguing that Feldman should dismiss the suit for failure to cite a claim.

"Plaintiffs fail to allege any facts showing an irreparable injury . . . [which] requires a showing that 'the harm to Plaintiffs is imminent,'" Denka writes in its Dec. 22 motion to dismiss the suit. "[T]he risk level cited by the Plaintiffs is based on exposure for 24 hours a day for 365 days a year over a period of 70 years. Accordingly, Plaintiffs failed to satisfy the non-speculative and imminence requirements for irreparable injury, as the NATA basis for Plaintiffs' entire case sets forth that such injuries are neither definite nor imminent."

Denka is also resisting the plaintiffs' request to certify a class. "Plaintiffs' Motion for Class Certification should be denied because it is untimely, and because the Court has expressly prohibited Plaintiffs from filing it," Denka argues. The defendant points to Feldman's Jan. 9 order denying plaintiffs' request for more time to file their petition to certify as a class.

"In the Order, the Court denied Plaintiffs' request for an extension of time because 'no good cause supports an extension and the request itself is untimely. ... Absent a showing of good cause, the plaintiffs' motion to extend should be denied as untimely, and the class allegations should be stricken or dismissed.'" -- *Maria Hegstad* (mhegstad@iwpnews.com)

Stephen A. Gilrein, P.E.
Deputy Director
Compliance Assurance and Enforcement Division
USEPA, Region 6
1445 Ross Ave., Dallas, TX 75202
214-665-8179